

**NEVADA DEPARTMENT OF  
CONSERVATION & NATURAL RESOURCES**

**STATE ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVES FOR**

**REGULATORY PETITIONS**

**COMMISSION PETITION NO. 2001-08**

**LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-089-01**

**DOCUMENTS INCLUDED IN THIS FILE:**

**YES SECRETARY OF STATE FILING FORM**

**YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B**

**REGULATORY PETITIONS**

**ORIGINAL DRAFTED BY COMMISSION**

**ADOPTED BY COMMISSION**

**YES AS FILED AND CODIFIED BY LCB**

Secretary of State  
Filing Data

**For Filing Administrative  
Regulations**

For Emergency  
Regulations Only

Effective Date

Expiration Date

Governor's Signature

**State Environmental Commission**

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

**Brief description of action:** **Petition 2001-08 (LCB R-089-01)** permanently amends NAC 519A.350, reclamation of land subject to mining operations or exploration projects. The amended regulations provide minor changes regarding surety bonding by allowing up to 75% of the required surety to be satisfied by the corporate guarantee, based upon periodic review by the administrator. The amendments also require that the financial information submitted comply with U.S. Generally Accepted Accounting Principles and that the financial statements submitted be audited.

**Authority citation other than 233B:** NRS 519A.160

**Notice date:** August 20, August 29 and September 6, 2001

**Hearing date:** September 18, 2001

**Date of Adoption of Agency:** September 18, 2001

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 2001-08 LCB File R-089-01  
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 519A. This regulation deals with amendments to the mining reclamation financial requirements.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

**Petition 2001-08 (LCB File R-089-01)**, was noticed three (3) August 20, August 29 and September 6, 2001 as a permanent regulation in the Las Vegas Review Journal and the Reno-Gazette-Journal newspapers. Regulatory workshops were conducted by the Nevada Division of Environmental Protection's Bureau of Mining Regulation and Reclamation on June 26, 2001 in Winnemucca, June 27, 2001 in Elko and June 28, 2001 in Las Vegas. The regulation was adopted by the State Environmental Commission as a permanent regulation on September 18, 2001. No oral comments opposing or supporting the regulation were received by the Commission during permanent adoption. Written comments supporting the corporate guarantee bonding were received by the Bureau of Mining Regulation and Reclamation from the Pyramid Lake Paiute Tribe. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3118, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

**2. The number persons who:**

<b>(a)</b>	<b>Attended each hearing;</b>	35
<b>(b)</b>	<b>Testified at each hearing:</b>	0
<b>(c)</b>	<b>Submitted to the agency written comments:</b>	1

**3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices and public workshops. No oral testimony was received that opposed or supported the regulation during permanent adoption. Written comments (exhibit #3) were received from the Nevada Mining Association that supported the regulation. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted by the State Environmental Commission on September 18, 2001 with an amendment.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

(a) Estimated economic effect of the regulation on the business which it is to regulate;

The proposed permanent regulation is not anticipated to have any significant adverse short or long-term economic impact on Nevada businesses; however, it may necessitate a small number of mine owners replace their corporate guarantee with an alternate form of surety.

(b) Estimated economic effect on the public;

The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

It is estimated that an additional cost for financial consultant review services will be \$36,000.00 per year.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

**8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The regulations are no more stringent than federal regulations.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The amended regulations do not provide a new fee nor amend existing fees.

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**FILED PERMANENT REGULATION OF THE  
NEVADA STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R089-01**

Effective October 25, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 519A.160.

**Section 1.** NAC 519A.350 is hereby amended to read as follows:

519A.350 1. An operator shall file a surety with the division or a federal land management agency, as applicable, to ensure that reclamation will be completed on privately owned and federal land. The surety may be:

- (a) A trust fund;
- (b) A bond;
- (c) An irrevocable letter of credit;
- (d) Insurance;
- (e) A corporate guarantee; or
- (f) Any combination thereof.

2. If the surety is a trust fund:

(a) The operator shall make a payment to the trust fund annually for the term of the exploration project or mining operation.

(b) The initial payment to the trust must be:

(1) For a new exploration project or mining operation, made before the land is affected.

(2) For an exploration project or mining operation which is active on October 1, 1990, made within 60 days after the operator receives a permit from the division.

(3) At least the amount required for reclamation pursuant to NAC 519A.360 divided by the number of years in the term of the project or operation.

(c) The annual payments must be:

(1) Made within 90 days after each anniversary date of the first payment.

(2) The difference between the amount required for reclamation pursuant to NAC 519A.360 and the current amount of the trust fund divided by the number of years remaining in the term of the project or operation.

3. If the surety is the bond of a corporation:

(a) It must contain an indemnity agreement guaranteeing payment to a trust fund for reclamation, the division or a federal land management agency, if applicable.

(b) It must state that the operator shall faithfully perform all requirements of the permit issued by the division.

(c) The corporation must be licensed to do business in the State of Nevada.

4. The operator may provide evidence of a surety provided by the program for the pooling of reclamation performance bonds developed by the division of minerals pursuant to NRS 519A.290.

5. If the surety is an irrevocable letter of credit, the letter of credit must:

- (a) Be executed and issued by a bank authorized and doing business in the State of Nevada or a correspondent bank which is authorized to do business in the State of Nevada.
- (b) Be made at the request of the operator.
- (c) State that the issuing bank will honor drafts for payment upon compliance with the terms of the credit.
- (d) Be irrevocable and issued for ~~{a period of}~~ at least 1 year.

the operator shall notify the division at least 60 days before the expiration of the letter of credit. The notice must state whether it will be renewed or replaced with another form of surety.

6. If the surety is insurance:

(a) The operator shall submit to the division a certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that, as of the close of the year, the financial warrantor meets the requirements of this subsection. The financial statement must set forth all nonrecurring items which affect net income.

(b) The net worth of the financial warrantor must be at least:

- (1) Ten million dollars; and
- (2) Twice the amount of all financial warranties.

(c) The tangible fixed assets of the financial warrantor in the United States must be worth at least \$20,000,000.

(d) The ratio of the liabilities to the net worth of the financial warrantor must not be more than 2 to 1.

(e) The net income, excluding nonrecurring items, of the financial warrantor must be positive.

(f) The financial warrantor must be authorized to conduct the business of insurance in the State of Nevada.

7. If the surety is a corporate guarantee:

(a) Not more than 75 percent of the required surety may be satisfied by the corporate guarantee~~{,}~~, *which is subject to periodic review and approval by the administrator of the division.* The remaining ~~{25 percent}~~ *portion* of the surety must be satisfied by a surety identified in this section.

(b) The ~~{certified}~~ *audited* financial statements of the corporation must indicate that the corporation has two of the following three ratios:

(1) A ratio of total liabilities to stockholder's equity less than 2 to 1.

(2) A ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than ~~{1}~~ *0.1* to 1.

(3) A ratio of current assets to current liabilities greater than 1.5 to 1.

(c) The net working capital and tangible net worth each must equal or exceed the amount established for reclamation pursuant to NAC 519A.360.

(d) The tangible net worth must be at least \$10,000,000.

(e) Ninety percent of the assets of the corporation must be:

(1) Located in the United States; or

(2) At least 6 times the amount established pursuant to NAC 519A.360.

***8. Any financial information submitted to the division pursuant to this section must be prepared in accordance with accounting principals that are generally accepted in the United States.***

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